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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1931.

No. 178

WILLIAM J. STRATTON, Secretary of State of the State of Illinois, Appellant,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a Corporation, Appellee.

APPEAL FROM STATUTORY DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.

STATEMENT AS TO JURISDICTION ON APPEAL.

Oscar E. Carlstrom,
Attorney General of Illinois,
Counsel for Appellant.

Bayard Lacey Catron,
Assistant Attorney General,
Of Counsel for Appellant.

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SPRINGFIELD, ILLINOIS.

(59290)

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WILLIAM J. STRATTON, SECRETARY OF STATE OF THE STATE OF ILLINOIS, APPELLANT,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, A CORPORATION, APPELLEE.

STATEMENT AS TO JURISDICTION ON APPEAL.

MAY IT PLEASE THE COURT:

The appellant, in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully represents:

I.

Statutory Provision Sustaining Jurisdiction.

This appeal is taken pursuant to Section 266 of the Judicial Code, as amended by the Act of February 13, 1925, which provides in part as follows:

"No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. * * * An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case.*** The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit (U. S. C., Title 28, Sec. 380; 43 Stat. 938)."

II.

Date of Decree and Application for Appeal.

The decree sought to be reviewed was entered in the District Court of the United State for the Southern District of Illinois, on the 27th day of April, 1931, and the application for appeal from such decree, with assign-

ments of error and prayer for reversal, was presented to the Court and allowed on the same date (R. 40-50).

III.

Nature of Case and Ruling Below.

The St. Louis Southwestern Railway Company, a corporation organized under the laws of the State of Missouri and authorized to do business in the State of Illinois, filed its amended bill in the District Court of the United States for the Southern District of Illinois, to enjoin the Secretary of State of the State of Illinois from assessing and collecting an annual franchise tax against it under Section 107 of the General Corporation Act of Illinois, which provides for a minimum tax based on the total issued capital stock, with a maximum limit in amount, which was applied to the plaintiff pursuant to the last clause of Section 105 of said Act (R. 4-24).

The bill alleges that the tax as assessed by the Secretary of State under Section 107 of said Act would place an unreasonable burden on interstate commerce and deprive the plaintiff of its privileges and immunities as a citizen, under paragraph 3 of Section 8 and Section 10 of Article I, and Section 2 of Article IV, respectively, of the Constitution of the United States, and would also deny the plaintiff the equal protection of the laws and

deprive it of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United State (R. 12-14).

The plaintiff prayed in its amended bill for both a preliminary and permanent injunction against the defendant to prevent him from instituting or prosecuting any proceedings to collect the tax assessed or to enforce any of the penalties prescribed by the Act for failure or refusal to pay such tax (R. 16-18). The plaintiff also filed a motion for a temporary injunction as prayed in the bill (R. 27-30). The defendant filed a motion to dismiss the bill for want of equity (R. 31-2). District Judge FitzHenry thereupon called to his assistance Circuit Judges Alschuler and Page for the purpose of hearing the application for a temporary injunction and motion to dismiss the bill (R. 35).

Upon the hearing the statutory court awarded a temporary injunction and denied the motion to dismiss the bill for want of equity, and defendant having elected to stand by his motion, the court also awarded a final decree for a permanent injunction as prayed in the bill. (R. 38-40.) The orders and decree to that effect were thereafter entered by the court on April 27, 1931, to which the defendant excepted and prayed an appeal to this

Court, which was allowed, the defendant having filed his petition for appeal, assignment of errors and prayer for reversal on the same date. (R. 42-50.)

The alleged errors assigned included the granting of the preliminary injunction as prayed against the defendant, denying his motion to dismiss the amended bill and ordering that a permanent injunction be issued against appellant as prayed in the bill; also, in refusing to hold that the tax assessed did not impose any unlawful burden upon the interstate commerce of appellee, or violate any provision of the Constitution of the United States or the Fourteenth Amendment thereto, as alleged in the bill, and holding in effect that Section 107 of the General Corporation Act of Illinois, as applied to appellee, imposed an invalid tax under the decisions of this Court, or imposed an unlawful burden upon the capital, property or business of appellee outside of that state, or discriminated against it or denied it the equal protection of the laws, or took any of its property without due process of law, as alleged in said amended bill. (R. 46-48.)

The appeal bond for costs as required by the court was duly filed and approved. (R. 51-2.) A citation was also issued to the appellee corporation, service of which

was acknowledged by the attorneys for appellee and filed herein, within thirty days, as provided by law. (R. 53-55.)

IV.

Cases Believed to Sustain Jurisdiction.

This is the same case in which a prior appeal was considered by this Court in 282 U. S. 10. The hearing on the application for the preliminary injunction, together with the motion to dismiss, and the order entered thereon, from which the present appeal was taken to this Court, is pursuant to the procedure required by the statute, as held by the Court in that decision and in other cases there cited by the Court. (*Chicago Great Western Railway Co.* v. *Kendall*, 266 U. S. 94, 97).

The appellant therefore respectfully submits that this Court has jurisdiction of this appeal under Section 266 of the Judicial Code, as amended by the Act of February 13, 1925, upon the proceedings above mentioned and set forth in the record herein.

Respectfully submitted,

Oscar E. Carlstrom,
Attorney General of Illinois,
Counsel for Appellant.

Bayard Lacey Catron,
Assistant Attorney General,
Of Counsel for Appellant.